IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 9178 OF 2005

N.R.C. Employees Union ... Petitioner

V/s

M/s. N.R.C. Ltd. & ors. ... Respondents

Mrs. Hutoxi Tavadia with M.M. Thorat for the petitioner.

Mr. P.K. Rele holding for Piyush Shah for the respondent No.1.

CORAM: P.V. KAKADE, J.

DATED: 23RD FEBRUARY, 2006

P.C.:

1. Heard both sides. Perused the record.

2. The petition is aimed against the order passed by the Industrial Court dated 5.10.2004 dismissing Complaint (ULP) No. 351 of 1997 pertaining to the alleged unfair labour practices under Items 5 and 9 of Schedule IV of the M.R.T.U. & P.U.L.P. Act, 1971 with prayer to direct the respondent Company to withdraw the circular dated 4.4.1997 vide which amount of licence fee, electric meter rent, charges and school fee, in

respect of English medium school was increased.

3. The respondent is a public limited Company manufacturing rayon yarn, engaging about 6000 workers and staff members. All the staff members employed in the factory and in the office, about 550, are members of the petitioner union. Respondent has signed several settlements with the Company. The settlement dated 25.8.1993 has been one of them which covers the education allowance, house rent allowance, etc. This settlement has been terminated by the Company and the union has served a charter of demand on the Company. The respondent Company is having about 2000 residential quarters for its employees and they are provided as part and parcel of their service conditions. Majority of the workers and staff are enjoying the residential quarters for more than 20 years. By settlement dated 25.8.1993, the Company has revised house rent allowance for the workers and staff. Under Clause No.6.2, licence fee is to be recovered by the Company from the occupants. Under clause No.8, the Company agreed to continue to pay education allowance of Rs.100/- per month and to continue existing practice of recovering school fee prevailing from time to time. In the past, the Company was recovering Rs.6/- per year as school fee. However,

from the staff members, the Company is collecting Rs.150/- from the students of 1st standard of English medium without any prior intimation. According to the union, this was breach of settlement of the year 1997. Vide Circular dated 4.4.1997, the respondent Company has increased an amount of licence fee in breach of settlement and, as such, on such and other grounds it was submitted that the Company has engaged in unfair labour practices as contemplated under Items 5 & 9 of Schedule IV of the MRTU & PULP Act, 1971.

4. After recording the evidence and hearing both parties, the Industrial Court was of the view that the complainant union failed to establish that the Company was indulging in unfair labour practices prescribed under Items 5 & 9 of Schedule IV of the Act and, as such, it was held that the complainant was not entitled to the relief claimed and complaint came to be dismissed. Hence the present petition.

5. At the outset, it may be noted that the impugned order was passed on 5.10.2004, whereas the petition has been filed on 20th Dec., 2005 i.e. after the delay of about more than one year. In order to overcome the delay, complainant union has filed the affidavit today

submitting that there are only two office bearers of the petitioner union who are actively following up the said litigations and the said office bearers were taking legal opinion of different lawyers in respect of filing of the present writ petition and hence the delay occurred which is prayed to be condoned.

6. In my considered view, strictly speaking, there is absolutely no sufficient ground made out to condone the delay and it is obvious that the petition suffers from delay and latches and has to be rejected on that count alone.

7. However, even on merits, the complaint has no merits at all. The Industrial Court has taken a view that the complainant union has not raised any pleading in connection with the alleged violation of Sec.9-A of the I.D. Act on the part of the respondent Company and, therefore, it was highly unsustainable on its part to make any attempt to prove what it has not pleaded. The learned counsel for the petitioner union tried to invite my attention to the contents of the complaint with submission that though the pleadings did not mention in so many words, the requirement of Sec.9-A of the I.D. Act, however, in substance, the pleadings were present.

However, I prefer to disagree with this submission. The lower Court has rightly observed that it was explicit from the record that it was a question of fact involved and the complainant union ought to have raised the pleading in that regard in the complaint filed before the Industrial Court and having not done so, it was highly unsustainable on its part to raise any contention in regard to alleged violation of Sec.9-A of the I.D. Act.

8. Be that as it may, even on perusal of the entire record, it is quite explicit that the charges, viz. licence fee, electric meter charges and English medium school fee, cannot take any shape on status of terms of service contract for a simple reason that the quarters, electric meters and the school provided by the respondent Company have been merely a social welfare activity undertaken by the Company, for which purpose my attention was invited to the settlement dated 5.8.1993 from which it is manifest that these charges have not been provided there or they have not been fixed as a matter of any term of the said settlement to take a shape of term of the contract of service existing between the members of the complainant union and the respondent company.

9. In view of these aspects, I am satisfied that the Industrial Court has appreciated the factual aspects of the evidence in proper perspective and has reached the conclusion in just, legal and proper manner and, therefore, it would brook no interference at all.

In the result, the petition has no merits and stands dismissed with no order as to costs.

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